

MAR 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	No. 07-30189
)	
Plaintiff - Appellee,)	D.C. No. CR-06-00104-SEH
)	
v.)	MEMORANDUM*
)	
DANELLE KAY FERGUSON,)	
)	
Defendant - Appellant.)	
_____)	

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted March 3, 2008**
Portland, Oregon

Before: FERNANDEZ and BEA, Circuit Judges, and EZRA,***
District Judge.

Danelle Kay Ferguson appeals her sentence for second degree murder of her

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

***The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

child. See 18 U.S.C. §§ 1111, 1153(a). She asserts that the district court committed a procedural error in failing to consider her "history and characteristics" under 18 U.S.C. § 3553(a) and that the sentence was not reasonable. We affirm.

As it was required to do, the district court first calculated the advisory Guideline range.¹ It then considered that range² plus the other factors set forth in 18 U.S.C. § 3553(a), including Ferguson's "history and characteristics," before imposing a sentence higher than the range. We have reviewed the record, including the sentencing transcript, and we hold that the district court did not: (1) commit a procedural error or (2) abuse its discretion by imposing an unreasonable sentence. See Gall, ___ U.S. at ___, 128 S. Ct. at 597; Kimbrough v. United States, ___ U.S. ___, ___, 128 S. Ct. 558, 575–76, 169 L. Ed. 2d 481 (2007); Rita v. United States, ___ U.S. ___, 127 S. Ct. 2456, 2466–67, 2469–70, 168 L. Ed. 2d 203 (2007); United States v. Nichols, 464 F.3d 1117, 1124–25 (9th Cir. 2006).

AFFIRMED.

¹See Gall v. United States, ___ U.S. ___, ___, 128 S. Ct. 586, 596–97, 169 L. Ed. 2d 445 (2007); United States v. Booker, 543 U.S. 220, 259–60, 125 S. Ct. 738, 764–65, 160 L. Ed. 2d 621 (2005); United States v. Mohamed, 459 F.3d 979, 985 (9th Cir. 2006).

²See USSG §§2A1.2, 3A1.1(b)(1), 3E1.1 (Nov. 1, 2006).